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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,830

09/20/2005

Erna Kastl

03/039K

1410

7590

01/30/2009

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/549,830</p>	<p>Applicant(s) KASTL, ERNA</p>	
	<p>Examiner ERIK KASHNIKOW</p>	<p>Art Unit 1794</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,2 and 4-24.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: Deleting the phrase "and said antimicrobial properties are imparted to the food casing by said metal salt alone" and adding the new limitation to claim 24 would require further consideration and/or search since removal of the limitation from claim 1 has broadened the scope of the claim which would require further consideration and search while amending claim 24 (as well as changing the dependence of claim 23 from claim 1 to claim 24) would also require further consideration and search. Examiner points out that even if the amendments were entered the claims would still be rejected, however it would require a change of the 102 rejection into a 103 rejection incorporating Yazaki et al. (US 5,094,847) and Schroder et al. (US 6,517,920). Examiner further points out that claim 1 would no longer be rejected under 112 1st paragraph. In regards to Applicant's argument that the Yazaki reference requires corona discharge treatment, Examiner points out that the table pointed to by Applicants only contains zeolite as the antibacterial material, and does not include silver salts of carboxylic acid. Examiner further points to column 2 lines 44-50 of Yazaki et al. which states that corona discharge could be used to increase antimicrobial activity. The phrase "could be used" exhibits that the salts already have antimicrobial activity, and further that corona discharge treatment is not necessary for antimicrobial activity, and may not affect antimicrobial activity. It is also pointed out that in light of the amendment to claims 1-22, there is nothing that excludes the use of corona discharge as disclosed by Yazaki et al. In regards to Applicant's arguments regarding examiner's use of the term "same material", Examiner points out that the 103 rejection incorporates all aspects of Applicant's invention in the given concentrations, and therefore the casing would intrinsically have all the same chemical, mechanical and physical properties. In regards to Applicant's arguments that the copending references are not analogous art, it is noted that the primary and secondary references are all directed to food casings and therefore are analogous art. Examiner also points out that these references are teaching references and are not required to teach the whole invention. In regards to Applicant's arguments that JP '923 teaches that antimicrobial agents in masterbatches should not exceed 10%, Examiner points out that .005-2% is within the range of "not exceed 10%".